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INDEX NO. 651786/2011

## Exhibit 12

to

Affidavit of Daniel M. Reilly in Support of Joint Memorandum of Law in Opposition to Proposed Settlement

## In The Matter Of: BONY v. February 7, 2013 Anne Marie Scribano Original File 20130207 - BONY.txt **Min-U-Script® with Word Index**

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4	In the matter of the application of	OFFICE OF THE ATTORNEY GENERAL 5 ERIC T. SCHNEIDERMAN
5	THE BANK OF NEW YORK MELLON, (as Trustee under various Pooling and Servicing Agreements and Indenture Trustee under various	120 Broadway 6 New York, New York 10271
6	<pre>Indentures), BlackRock Financial Management Inc.(intervenor), Kore Advisors, L.P. (intervenor), Maiden Lane, LLC (intervenor),</pre>	BY: THOMAS TEIGE CARROLL 7 Deputy Bureau Chief
7	Metropolitan Life Insurance Company (intervenor), Trust Company of the West and affiliated companies controlled by the TCW	8 STATE OF DELAWARE
8	Group, Inc. (intervenor), Neuberger Berman Europe Limited (intervenor), Pacific Investment Management Company LLC	DEPARTMENT OF JUSTICE  9 820 North French Street, 5th Floor
9	(intervenor), Goldman Sachs Asset Management, L.P. (intervenor), Teachers Insurance and Annuity Association of America	Wilmington, DE 19801 10 BY: GREGORY C. STRONG
10	(intervenor), Invesco Advisors, Inc. (intervenor), Thrivent Financial for Lutherans (intervenor), Landesbank	Director 11
11	Baden-Wuerttemberg (intervenor), LBBW Asset Management (Ireland) plc, Dublin (intervenor), ING Bank fsb (intervenor), ING Capital	12
12	LLC (intervenor), ING Investment Management LLC (intervenor), Nationwide Mutual Insurance Company and its affiliated companies (intervenor), AEGON USA Investment Management LLC, authorized	Anne Marie Scribano Senior Court Reporter
13	signatory for Transamerica Life Insurance Company, AEGON Financial Assurance Ireland Limited, Transamerica Life	14
14	International (Bermuda) Ltd., Monumental Life Insurance Company, Transamerica Advisors Life Insurance Company, AEGON Global	15
15	Institutional Markets, plc, LIICA Re II, Inc., Pine Falls Re, Inc., Transamerica Financial Life Insurance Company, Stonebridge	16
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17	(intervenor), Bayerische Landesbank (intervenor), Prudential Investment Management, Inc. (intervenor), and Western Asset	18
18	Management Company (intervenor),	19
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	GIBBS & BRUNS LLP	2 THE COURT: So, on the record
	Attorneys for Institutional Investors	THE COURT: So, on the record.  We have a lot of motions, a lot of letters. I'll
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BONY v. February 7, 2013

	February 7, 2013
Page 65	Page 67
1 Proceedings	1 Proceedings
2 amount was fair. The expert was asked to evaluate the	2 THE COURT: Okay.
3 different methodologies of the counterparties. That's what	3 MR. ROLLIN: Your Honor, I'm not sure what that
4 he did. That's what the report speaks to. And that's it.	4 means in terms of what we're not getting.
5 If we're getting into the fairness of the	5 THE COURT: What?
6 settlement amount, your Honor, which we've consistently	6 MR. ROLLIN: I'm not sure what that means in terms
7 Ms. Patrick, as early as this morning, made the point	7 of what we're not getting.
8 again believed is not the standard here, then anything	8 THE COURT: I'll tell you, I was just going to
9 that we did as a trustee is actually completely irrelevant	9 start with the next motion, but, honestly, we went in the
10 to the Court and that will be a whole new presentation of	10 back and I took a look at specifically what you asked for,
11 evidence on the settlement fairness and the amount of the	11 and that was exactly what my decision was going to be, so
<b>12</b> settlement, whether it's fair. That's not what we're	12 let's just do it and go through it. He already offered to
13 presenting, your Honor.	<b>13</b> produce, prior to this, the industry reports, as we know.
And they make, you know, they consistently throw	14 And I thought that the first subsection of your document
<b>15</b> out the different findings in the order, the proposed order.	15 request which was facts, data, things that Mr. Lin relied
16 That's our burden. If, at the end of the day, we don't meet	16 upon. I think you heard what I said. That's what I would
17 point F, the Court will strike that out. And if that, you	17 expect you would get when you're dealing with an expert. I
18 know, defeats the purpose, it defeats the purpose. But	18 really don't go for the, you know, the bills, the invoices.
19 they're basically saying "Your Honor, we're really concerned	19 I mean, you know, at some point, I don't think that's
20 that they're not going to meet their burden." That's a	20 relevant. The drafts. I was going to that's what I was
21 first for me, your Honor, in litigation, that my opponent is	21 going to say on the record, so that's what I'm going to say
<b>22</b> actually concerned about whether I meet my burden or not.	22 on the record. Of course, he said it, but it just made it
23 It's our burden. Whatever we submit as the order the	23 even easier. That's exactly what I was going to order.
<b>24</b> proposed order, if we don't meet that burden, your Honor, we	24 The rest of the things really are not relevant,
25 loose that point.	25 they just go beyond I understand relevance isn't "okay,
So it's just we've been hearing this same trope	26 enough is enough" or 1,100 pages or a million pages, none of
Page 66	Page 68
Page 66  1 Proceedings	Page 68  1 Proceedings
1 Proceedings	1 Proceedings
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Page 149 Page 151 1 Proceedings 1 Proceedings 2 of law and you're going to have to answer it. I think it's 2 THE COURT: Do they change? MR. INGBER: No. 3 going to be presented --3 THE COURT: First, I want to know what your 4 What's different, okay, what's different is that, 5 answer -- that's what you think? 5 before an event of default, the trustee doesn't have to 6 MR. REILLY: That's what I think. 6 exercise any rights whatsoever. It has to fulfill its 7 And I think that's what Ms. Patrick fairly thought 7 obligations, it's duties. It doesn't have to fulfill any 8 from the e-mail that she's sending. She's saying "We're not 8 rights. It doesn't have to exercise any of its rights 9 going to stop this from happening. We're willing to hold 9 before an event of default. After an event of default, it 10 off on sending the notice to the trustee that says you have 10 has to exercise those rights that a prudent trustee would 11 to sue." That's basically what she's saying. "I can stop 11 exercise. That is the difference between before an event of 12 on this. I won't do that. I'll tell you I won't do that. 12 default and an after an event of default. 13 13 But I am not going to let you avoid getting to this side of And the reason why I said it's irrelevant is 14 the red." 14 because the trustee exercised the right -- the trustee 15 The trustee is going to say, I believe, "No event 15 exercised the right to pursue remedies against Bank of 16 of default occurred, we didn't want it to occur and it 16 America and Countrywide. It had nine months of 17 didn't occur." 17 negotiations, which culminated in the largest private 18 Now, if that happened and that legal issue was **18** settlement in history. It did more than any other trustee 19 sitting squarely in their laps at that time, what advice did 19 was doing at the time. So it not only acted prudently, it 20 they get? What did they say to the lawyers? "Help us acted above and beyond what every trustee was doing. So the 21 establish a strategy where we can prevent this," which would 21 argument about whether an event of default occurred or 22 be to the contrary of the interests of certificate holders, 22 didn't occur is -- it's a non sequitur, in a way, it's a red 23 but might be to the benefit of the trustee. 23 herring, because we fulfilled whatever obligations we had 24 Yes? 24 post event of default by having these discussions, by THE COURT: What did -- I'm sorry -- I mean, 25 looking for a remedy that was in the best interests of the 25 26 obviously, we're not going to get through two-and-a-half 26 trust and having that discussion, that nine-month discussion Page 150 Page 152 Proceedings Proceedings 2 culminating in this settlement agreement. So this has 2 more motions with everybody talking in the next 35 minutes 3 and, unfortunately, this isn't federal court, I can't get 3 nothing to do with -- the question of whether there's an 4 one minute. I already know that. 4 event of default is irrelevant and it has nothing to do with 5 Can you answer me -- this has been an issue that's 5 the question of whether we've put legal advice at issue. 6 come up all day long. So what is your position on the event What we -- and I'd like to respond. I know we're 7 of default situation? Do you think it never happened and 7 running out of time. I'd like to respond to some of the why? points before we --9 MR. INGBER: Okay. The answer is it never THE COURT: Okay. What about the second thing on 10 happened because there was a forbearance agreement that was 10 his chart, the second item, where he says the event of 11 signed and it's irrelevant whether it happened or not. 11 default would also, in addition to requiring you to act as a 12 THE COURT: Well, wouldn't -- I mean, is he wrong, 12 prudent person -- and you're telling me you acted as an 13 Mr. Reilly, is he wrong to say that, once there's an event 13 exceedingly prudent person --14 14 of default, the trustee's obligations switch, become higher, MR. INGBER: Yes. THE COURT: -- whether it occurred or not. 15 like his chart over there is explaining? 15 MR. INGBER: Here's what happens. And this, by **16** But what about the obligation to give notice of the event of 17 the way, has nothing to do with the question of whether default to all the certificate holders, not just Ms. 18 legal advice was put at issue. But let me answer your **18** Patrick's clients, but their clients and everybody else? **19** question directly. 19 MR. INGBER: If there is, in fact, an event of THE COURT: I'm interested. Humor me. 20 20 default -- and let's be clear about what was going on at the MR. INGBER: I understand, but let me answer the 21 21 time. Ms. Patrick issued what's called a notice, a notice **22** question directly. 22 of nonperformance. 23 THE COURT: It's been so interesting so far. 23 THE COURT: Okay. 24 MR. INGBER: At all times, the trustee has to 24 MR. INGBER: That was not a notice of an event of **25** fulfill its obligations that are under the contract, before 25 default, it was a notice of nonperformance. And it 26 an event of default and after an event of default. **26** purported to trigger a 60-day cure period.

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